

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO
MATTHEW J. DYKMAN
CLERK

MAR 10 2016

FRANK Dombos, plaintiff pro-se

- v -

ROBERT STEWART, defendant

no. 16cv178 RAS-GJF

NOTICE OF REMOVAL TO THE UNITED STATES
DISTRICT COURT

COMES NOW PRO-SE PLAINTIFF MR. FRANK Dombos, AND ASSERTS THIS COURT HAS JURISDICTION OVER PLAINTIFF'S CLAIMS PURSUANT TO 42 U.S.C. § 1983 AND 28 U.S.C. § 1331 BECAUSE PLAINTIFF RAISES A QUESTION OF FEDERAL LAW.

1.) BACKGROUND.

PLAINTIFF'S COMPLAINT IS A CIVIL RIGHTS CLAIM BASED ON AN ALLEGED VIOLATION OF HIS EIGHTH AMENDMENT RIGHT TO BE FREE FROM CRUEL AND UNUSUAL PUNISHMENT UNDER ESTELLE-V-GAMBLE 429 U.S. 97 (1976). AND I ALSO CITED THE SUBJECTIVE AND OBJECTIVE STANDARD FOR ESTABLISHING DELIBERATE INDIFFERENCE AS OUTLINED UNDER IT, AS WELL AS FARMER-V-BRENNAN 511 U.S. 825 837 (1994) IN MY FILINGS IN THIS ACTION.

"DEPRIVATION OF A BASIC HUMAN NEED, HEAT. FAILURE TO MAINTAIN THE BASIC MINIMAL CIVILIZED MEASURE OF LIFE'S NECESSITIES." HELLING-V-MCKINNEY 509 U.S. 25, 31-32 (1993).

PLAINTIFF IS A STATE PRISONER IN NEW MEXICO CURRENTLY INCARCERATED AT PENITENTIARY OF N.M. SANTA FE, N.M. 87504.

IN THE WINTER OF 2011-12 WHILE PLAINTIFF WAS INCARCERATED AT WESTERN N.M. CORRECTIONAL FACILITY AT GRANTS, N.M. MR. Dombos WAS FORCED TO LIVE IN A PRISON CELL WITH NO HEAT ALL WINTER LONG. MR. Dombos STATED A CLAIM FOR VIOLATION OF HIS EIGHTH (8TH) AMENDMENT RIGHTS IN N.M. STATE DISTRICT COURT, 13TH JUDICIAL

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DISTRICT COURT, CIBOLA COUNTY N.M. GRANTS, N.M. 87020, IN CIVIL ACTION NO. C.V. 2012-124 BACK ON 6-4-2012 ABOUT THIS, IT IS STILL ACTIVE THERE TO THIS DATE.

DEFENDANT IS MR. ROBERT STEWART WHO WAS WARDEN AT W.N.M. C.F. BACK THEN. MR. DOMBOS BROUGHT THIS CASE FORWARD AGAINST MR. STEWART IN BOTH HIS INDIVIDUAL, AND OFFICIAL CAPISITY.

DEFENDANT FILED MOTION FOR SUMMARY JUDGEMENT IN DECEMBER 2013. THE STATE DISTRICT COURT GRANTED THEIR MOTION. PLAINTIFF DOMBOS FILED AN APPEAL ON THIS TO N.M. COURT OF APPEALS, ITS NUMBER # 33,703. THE N.M.-C.O.A. FILED THEIR "NOTICE OF PROPOSED SUMMARY DISPOSITION" ON JULY 1, 2014. DEFENDANT DID NOT FILE ANY MEMORANDUM IN OPPOSITION TO THIS. THE N.M.-C.O.A. THEN FILED THEIR MEMORANDUM OPINION ON SEPTEMBER 11, 2014. AND MANDATE TO DISTRICT COURT CLERK ON DECEMBER 18, 2014.

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THE N.M.-C.O.A. CONSTRUED (PAGE #3) OF THEIR JULY 1, 2014 NOTICE OF PROPOSED SUMMARY DISPOSITION THAT MY COMPLAINT IS A CIVIL RIGHTS CLAIM BASED ON AN ALLEGED VIOLATION OF MY EIGHTH AMENDMENT RIGHT TO BE FREE FROM CRUEL AND UNUSUAL PUNISHMENT. FURTHERMORE THEY PROPOSED TO HOLD THAT PLAINTIFF HAS STATED AN EIGHTH AMENDMENT CLAIM SUFFICIENT TO SURVIVE SUMMARY JUDGEMENT SIMPLY FOR THE PHYSICAL AND MENTAL SUFFERING HE ALLEGEDLY ENDURED AS A RESULT OF THE COLD TEMPERATURES CITING CHANDLER-V-BAIRD 926, F.2d. 1057, 1065-66 (11TH CIR. 1991).

"REVERSING SUMMARY JUDGEMENT ON 8TH AMENDMENT CLAIM DUE TO GENUINE ISSUES OF MATERIAL FACT."

WHERE INMATE CLAIMED HE HAD BEEN KEPT IN A 60 DEGREE CELL WITHOUT CLOTHES; NOTING THAT "THE RIGHT OF A PRISONER NOT TO BE CONFINED IN A CELL AT SO LOW A TEMPERATURE AS TO CAUSE SEVERE DISCOMFORT WAS WELL ESTABLISHED IN 1986." LEWIS-V-LANE 816, F.2d. 1165, 1171 (7TH CIR. 1987). "REVERSING SUMMARY JUDGEMENT AND NOTING THAT ALLEGATIONS OF INADEQUATE HEATING CAN STATE

A CLAIM FOR VIOLATION OF EIGHTH AMENDMENT."

2.) RELIEF REQUESTED:

PLAINTIFF Dombos STATES THAT A CLAIM THAT ARISES UNDER THE CONSTITUTION OF THE UNITED STATES IS ONE OVER WHICH THE DISTRICT COURTS OF THE UNITED STATES HAVE ORIGINAL JURISDICTION. 28 U.S.C. § 1331. AND MR. Dombos PRAYS THIS CIVIL RIGHTS CLAIM BE ALLOWED TO PROCEED IN THE U.S. DISTRICT COURT FOR THE DISTRICT OF NEW MEXICO FOR THESE REASONS STATED HEREIN.

DECLARATION UNDER PENALTY OF PERJURY

I PLAINTIFF PRO SE MR. FRANK Dombos IN THIS ACTION, SWEAR UNDER PENALTY OF PERJURY THAT THE ABOVE IS TRUE AND CORRECT TO THE BEST OF MY ABILITY. 28 U.S.C. § 1746, 18 U.S.C. § 1621. -THIS MARCH 3, 2016.
FRANK Dombos #63001 Frank Dombos P.N.M. P.O. Box 1059, SANTA FE, N.M. 87504
RESPECTFULLY SUBMITTED THIS 3RD DAY OF MARCH 2016.
P.N.M. P.O. Box 1059, SANTA FE, N.M. 87504 -FRANK Dombos #63001 Frank Dombos

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CERTIFICATE OF SERVICE

I CERTIFY THE FOREGOING WITH EXACT HAND WRITTEN COPIES OF IT, WAS GIVEN TO PRISON STAFF HERE AT P.N.M. TO PLACE IN THE U.S. MAIL BOX TO THE PARTIES LISTED BELOW THIS 4TH DAY OF MARCH 2016. Frank Dombos

- 1.) UNITED STATES DISTRICT COURT, DISTRICT OF NEW MEXICO
OFFICE OF THE CLERK-SUITE 270-333 LOMAS BLVD. N.W. - ALBUQ. N.M. 87102
- 2.) 13TH JUDICIAL DISTRICT COURT - CIBOLA COUNTY
P.O. BOX 758 GRANTS, N.M. 87020
- 3.) N.M. ATTY. GEN. DEPUTY GENERAL COUNSEL MR. BRIAN E. FITZGERALD.
N.M. CORR. DEPT. P.O. BOX 27116 SANTA FE, N.M. 87502

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MAILED FROM PENITENTIARY
OF NEW MEXICO (SANTA FE).

E-mail

Digitized by srujanika@gmail.com

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At Albuquerque NM
MAY 10 2016
MATTHEW G. DYKMAN
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87102

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